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### TRADE UNION LAW IN CANADA

M. Mac Neil, M. Lynk and P. Engelmann

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#### Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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A resource designed around the concerns of labour unions, *Trade Union Law in Canada* comprehensively explains the various strands of the law that affect the internal affairs of trade unions. While examining the relationships between unions and their members, *Trade Union Law in Canada* provides analysis of the legal character of unions, including their legal status, security, and politics, as well as a review of union structures, constitutions, and the election of union leaders. Matters of internal discipline of union members and the duty imposed by law on unions to provide fair representation are examined and clearly explained.

### **What's New in This Update:**

This release features updates to the case law and commentary in Chapter 1 (The Legal Status of Trade Unions), 2 (Union Security), 3 (Unions, Politics and Law), 8 (Admission to Membership), and 9 (Discipline and Expulsion from Union Membership).

### **Case Highlights**

- **THE LEGAL STATUS OF TRADE UNIONS—MODERN LAW OF UNION STATUS—GENERALLY**—In *Kelava v. Spadacini*, the Court of Appeal for Ontario has definitively stated that lawsuits involving unions should, as a result of *The Rights of Labour Act*, be framed as representative actions. In doing so, the Court rejected the union's position that—as an unincorporated association—it had no legal personality. In this case involving a wrongful termination claim brought in Small Claims Court, the Court of Appeal held the action could proceed and that there was nothing preventing the Small Claims Court from appointing a representative (notwithstanding that the Court's *Rules* did not explicitly give the Court authority to do so).
- **UNIONS, POLITICS AND LAW—UNION POLITICAL ACTIVITIES—RESTRICTIONS ON ELECTION-RELATED SPENDING—THIRD-PARTY ADVERTISING DURING ELECTIONS**—In June 2021, the Superior Court of Justice held in *Working Families Ontario v. Ontario* that Ontario's amendments to the *Election Finances Act* to regulate third-party (including union) spending during the pre-election period violated the Charter's guarantee of freedom of expression. The Ontario government responded by enacting the *Protecting Elections and Defending Democracy Act, 2021* that re-enacted the impugned provisions and also relied on the *Charter's* notwithstanding clause. The Working Families Coalition sought to challenge the revised third-party spending regulations on the basis that they violated the Charter's guarantee of a right to vote under s. 3, which violation would

not have been saved by the notwithstanding clause. In *Working Families Coalition (Canada) Inc. v. Ontario*, though, the Superior Court of Justice held that the measures did not interfere with the right to vote (though they did infringe upon freedom of expression). The court found that the measures were sufficiently carefully tailored to foster egalitarian elections.

- **DISCIPLINE AND EXPULSION FROM UNION MEMBERSHIP—STATUTORY BASES FOR INTERVENTION—OTHER STATUTORY PROVISIONS—COERCION AND INTIMIDATION**—Two decisions of the British Columbia Labour Relations Board have described the scope of prohibitions against intimidating and coercive conduct by unions. In *Sooke Family Resource Society and BCGEU*, the board said union organizers could “press their case for unionization to the point of being a nuisance, provided they did not engage in intimidation or coercion.” Even if some of the organizer’s statements turned out to be untrue, they did not amount to intimidation or coercion. Similarly, in *Lantic Inc. and Public and Private Workers of Canada, Local 8, Re*, the board held that even inaccurate statements about what could happen to wages and benefits if the union was certified after a raised could not be characterized as a threat or attempt to use force, fear or compulsion.

## ProView Developments

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- The opening page is now the title page of the book as you would see in the print work
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